

## REAUTHORIZATION OF NATIONAL HISTORIC PRESERVATION ACT

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APRIL 21, 1998.—Committed to the Committee of the Whole House on the State of  
the Union and ordered to be printed

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Mr. YOUNG of Alaska, from the Committee on Resources,  
submitted the following

### REPORT

[To accompany H.R. 1522]

[Including cost estimate of the Congressional Budget Office]

The Committee on Resources, to whom was referred the bill (H.R. 1522) to extend the authorization for the National Historic Preservation Fund, and for other purposes, having considered the same, report favorably thereon with an amendment and recommend that the bill as amended do pass.

The amendment is as follows:

Strike out all after the enacting clause and insert in lieu thereof the following:

#### SECTION 1. AMENDMENT OF NATIONAL HISTORIC PRESERVATION ACT.

The National Historic Preservation Act (16 U.S.C. 470 and following; Public Law 89-665) is amended as follows:

(1) In the third sentence of section 101(a)(6) (16 U.S.C. 470a(a)(6)) by striking “shall review” and inserting “may review” and by striking “shall determine” and inserting “determine”.

(2) Section 101(e)(2) (16 U.S.C. 470a(e)(2)) is amended to read as follows:

“(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by an Act of Congress approved October 26, 1949 (63 Stat. 947), consistent with the purposes of its charter and this Act.”.

(3) Section 102 (16 U.S.C. 470b) is amended by redesignating subsection (e) as subsection (f) and by redesignating subsection (d), as added by section 4009(3) of Public Law 102-575, as subsection (e).

(4) Section 101(b)(1) (16 U.S.C. 470a(b)(1)) is amended by adding the following at the end thereof:

“For purposes of subparagraph (A), the State and Indian tribe shall be solely responsible for determining which professional employees, are necessary to carry out the duties of the State or tribe, consistent with standards developed by the Secretary.”.

(5) Section 107 (16 U.S.C. 470g) is amended to read as follows:

“SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds as depicted on the map entitled ‘Map Showing Properties Under the Jurisdiction of the Architect of the Capitol’ and dated November 6, 1996, which shall be on file in the office of the Secretary of the Interior.”.

(6) Section 108 (16 U.S.C. 470h) is amended by striking “1997” and inserting “2004”.

(7) Section 110(a)(1) (16 U.S.C. 470h–2(a)(1)) is amended by inserting the following before the period at the end of the second sentence: “, especially those located in central business areas. When locating Federal facilities, Federal agencies shall give first consideration to historic properties in historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this Act must be architecturally compatible with the character of the surrounding historic district or properties”.

(8) The first sentence of section 110(l) (16 U.S.C. 470h–2(l)) is amended by striking “with the Council” and inserting “pursuant to regulations issued by the Council”.

(9) The last sentence of section 212(a) (16 U.S.C. 470t(a)) is amended by striking “2000” and inserting “2004”.

(10) Section 205 (16 U.S.C. 470m) is amended by adding the following new subsection after subsection (g):

“(h) Any permanent employee of the Council as of December 31, 1997, may be appointed to a position in another agency of the Executive branch without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, if the agency or the Office of Personnel Management, as appropriate, determines that the employee is qualified for the position.”.

## PURPOSE OF THE BILL

The purpose of H.R. 1522 is to extend the authorization for the National Historic Preservation Fund, and for other purposes.

## BACKGROUND AND NEED FOR LEGISLATION

H.R. 1522 was introduced to reauthorize the National Historic Preservation Fund until September 30, 2004. The bill amends the National Historic Preservation Act of 1966 (NHPA) (16 U.S.C. 470) which establishes a general policy of Federal support and funding for the preservation of prehistoric and historic resources of the nation.

The NHPA authorizes the Secretary of the Interior to expand and maintain the National Register of Historic Places, an inventory of districts, sites, buildings, and structures significant on a national, state or local level representing American history, architecture, archeology, engineering, and culture. The NHPA encourages State and local historic preservation, through State Historic Preservation Officers (SHPO), coordinating with the Secretary. The NHPA also authorizes a grant program, under the Historic Preservation Fund, to provide States monies for historic preservation projects and to individuals for the preservation of properties listed on the National Register. These funds are derived from an authorization by Congress from the Land and Water Conservation Fund. This \$150 million per fiscal year authorization expired on September 30, 1997. Congress appropriated \$36 million for the Historic Preservation Fund for fiscal year 1997.

The NHPA also establishes the Advisory Council on Historic Preservation. The Council reviews the policies of Federal agencies

in implementing the NHPA, conducts training and educational programs, and encourages public participation in historic preservation. The most important, and often the most controversial, role of the Council is administering Section 106 of the NHPA.

H.R. 1522 modifies the existing Secretarial review of nominations to the National Historic Register as an option of appeal, rather than a mandatory stage in the nominating process as it currently exists. This legislation intends that most of the decision making would take place at the state and local level, while acknowledging the problems that do arise at that level which require a court of higher appeal.

Moreover, H.R. 1522 would preserve the rights of individual citizens to make land-use decisions involving their private property. This concern has been shared by past Congresses and provisions for owner participation in the nomination process are included at least twice in the existing law. Nevertheless, the present requirements for owner notification are too often honored more in form than in spirit and individuals are too often notified of their property's eligibility for nomination by form letters so couched in legalese as to be incomprehensible to the average American. The National Park Service shall reexamine the notification letters it requires to be sent to the owners of properties being considered for the National Register of Historic Places to ensure that they are easy to read and understand, and clearly state the owners rights and responsibilities under the NHPA.

The bill would allow the Secretary to administer grants to the National Trust for Historic Preservation consistent with the purposes of its charter and this Act. Honoring its previous agreement with Congress, the Trust is privately funded, receives no appropriated funds and seeks no return to that process. However, the Trust has been a useful conduit for managing supplemental funding in special circumstances and emergencies, such as the Mississippi River floods of 1994, and the current deterioration of the Congressional Cemetery in Washington, D.C.

H.R. 1522 modifies the existing regulations for State Historical Preservation Offices to allow greater state and tribal control over the composition of their staffs. Whereas currently, these Offices are required to employ or contract for the services of an architect, an archaeologist, and an historian, some Offices have claimed they have no need for an architect. The Interior Department is currently developing professional standards for these positions, which will include expertise beyond mere academic accreditation. It is this bill's intent that States and tribes should have the right to tailor their preservation staffs to their own needs, provided they meet these standards.

In the spirit of laws passed by the 104th Congress, the Federal Government should make every effort to cooperate with historic preservation officials in the District of Columbia. Revised Section 107 of the NHPA reiterates that the Act shall be inapplicable to the White House and its grounds, the Supreme Court building and its grounds, and the United States Capitol and its related buildings and grounds. However, it clarifies that these properties, buildings, and grounds are limited to those areas delineated on maps to be on file with the Secretary of the Interior.

This modification is necessary because the Federal Government, from time to time, undertakes activities on real property within the District of Columbia that is located outside of the principal buildings and grounds. For example, the Architect of the Capitol recently demolished an historic 19th century rowhouse at 321 Massachusetts Avenue, N.W., in the District of Columbia to erect a Senate day care facility at the site. This action was taken without following the public review and consultation process set forth in the NHPA. The revision to Section 107 clarifies that the exemptions that the agencies enjoy are limited only to the principal buildings and grounds, thus ensuring that those agencies honor historic preservation laws when it performs activities outside those boundaries.

H.R. 1522 would also extend authorization of the Historic Preservation Fund through 2004. This is intended to coordinate the budget deadlines for the Fund, the Advisory Council on Historic Preservation and the Balanced Budget Act.

This legislation also codifies Executive Order No. 13006, locating Federal facilities in the Nation's central cities. Too often the Park Service, and other Federal agencies, build new structures or visitors centers virtually adjacent to historic structures. The result has been a loss of historic fabric, sometimes misguided spending and in the case of many cities, the waste of landmark structures which bind downtown areas together. Executive Order No. 13006 is a sensible step toward alleviating this practice.

H.R. 1522 would clarify NHPA Section 106 compliance procedures for heads of Federal agencies, it extends authorization for the Council through 2004, and grants employees of the Advisory Council the same employment status as other members of the Executive Branch.

#### COMMITTEE ACTION

H.R. 1522 was introduced on May 1, 1997, by Congressman Joel Hefley (R-CO). The bill was referred to the Committee on Resources, and within the Committee to the Subcommittee on National Parks and Public Lands. On October 21, 1997, the Subcommittee held a hearing on H.R. 1522, where members of the Administration, represented by the National Park Service, and the Advisory Council on Historic Preservation testified in support of reauthorization of the Historic Preservation Fund through 2004. They did express reservations regarding some of the amendments contained within H.R. 1522. On March 12, 1998, the Subcommittee met to mark up H.R. 1522. An amendment in the nature of a substitute was offered by Congressman Hefley, and adopted by voice vote. The amended version of H.R. 1522 reauthorizes funding for the National Historic Preservation Fund until the year 2004 and attempts to balance greater State control over the historic programs. The bill was then ordered favorably reported to the Full Committee by voice vote. On March 25, 1998, the Full Resources Committee met to consider H.R. 1522. No further amendments were offered and the bill was then ordered favorably reported, as amended, to the House of Representatives by voice vote.

#### COMMITTEE OVERSIGHT FINDINGS AND RECOMMENDATIONS

With respect to the requirements of clause 2(l)(3) of rule XI of the Rules of the House of Representatives, and clause 2(b)(1) of rule X of the Rules of the House of Representatives, the Committee on Resources' oversight findings and recommendations are reflected in the body of this report.

#### FEDERAL ADVISORY COMMITTEE STATEMENT

The functions of the proposed advisory committee authorized in H.R. 1522 are not currently being nor could they be performed by one or more agencies, an advisory committee already in existence or by enlarging the mandate of an existing advisory committee.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Article I, section 8 and Article IV, section 3 of the Constitution of the United States grant Congress the authority to enact H.R. 1522.

#### COST OF THE LEGISLATION

Clause 7(a) of rule XIII of the Rules of the House of Representatives requires an estimate and a comparison by the Committee of the costs which would be incurred in carrying out H.R. 1522. However, clause 7(d) of that rule provides that this requirement does not apply when the Committee has included in its report a timely submitted cost estimate of the bill prepared by the Director of the Congressional Budget Office under section 403 of the Congressional Budget Act of 1974.

#### COMPLIANCE WITH HOUSE RULE XI

1. With respect to the requirement of clause 2(l)(3)(B) of rule XI of the Rules of the House of Representatives and section 308(a) of the Congressional Budget Act of 1974, H.R. 1522 does not contain any new budget authority, spending authority, credit authority, or an increase or decrease in revenues or tax expenditures.

2. With respect to the requirement of clause 2(l)(3)(D) of rule XI of the Rules of the House of Representatives, the Committee has received no report of oversight findings and recommendations from the Committee on Government Reform and Oversight on the subject of H.R. 1522.

3. With respect to the requirement of clause 2(l)(3)(C) of rule XI of the Rules of the House of Representatives and section 403 of the Congressional Budget Act of 1974, the Committee has received the following cost estimate for H.R. 1522 from the Director of the Congressional Budget Office.

## CONGRESSIONAL BUDGET OFFICE COST ESTIMATE

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
Washington, DC, April 7, 1998.

Hon. DON YOUNG,  
*Chairman, Committee on Resources,*  
*House of Representatives, Washington, DC.*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 1522, a bill to extend the authorization for the National Historic Preservation Fund, and for other purposes.

If you wish further details on this estimate, we will be pleased to provide them. The CBO staff contact is Deborah Reis.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 1522—A bill to extend the authorization for the National Historic Preservation Fund, and for other purposes*

Summary: H.R. 1522 would extend through fiscal year 2004 annual deposits of \$150 million to the Historic Preservation Fund (HPF). Authority for such deposits, which consist of receipts earned from oil and gas development on the Outer Continental Shelf, expired at the end of fiscal year 1997. The National Park Service uses amounts appropriated from the HPF for grants to the National Trust for Historic Preservation, to state, local, and tribal governments, and to nonprofit and other organizations. The bill also would extend through fiscal year 2004 the authorization of \$4 million a year for the Advisory Council on Historic Preservation. This sum is currently authorized to be appropriated (from the general fund of the U.S. Treasury) through fiscal year 2000.

Assuming appropriation of the amounts deposited into the HPF each year, and assuming appropriation of the authorized amounts for the Advisory Council on Historic Preservation, CBO estimates that enacting H.R. 1522 would result in additional discretionary spending of \$570 million over the 1999–2003 period. The legislation would not affect direct spending or receipts; therefore, pay-as-you-go procedures would not apply. H.R. 1522 does not contain any intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would have no impact on the budgets of state, local, or tribal governments.

Estimated cost to the Federal Government: The \$150 million to be deposited into the HPF under H.R. 1522 is the same amount that was deposited to the fund annually from 1980 through 1997, but is significantly higher than the \$30 million to \$50 million generally appropriated (from the HPF) for each year. In recent years, annual appropriations for the advisory council have been about \$3 million. The estimated budgetary impact of H.R. 1522 is shown in the following table. The costs of this legislation fall within budget function 300 (natural resources and environment).

(By fiscal year, in millions of dollars)

	1998	1999	2000	2001	2002	2003
SPENDING SUBJECT TO APPROPRIATIONS						
Spending under current law:						
Budget authority/authorization level <sup>1</sup> .....	44	4	4	0	0	0
Estimated outlays .....	44	26	12	2	0	0
Proposed changes:						
Authorization level .....	0	150	150	154	154	154
Estimated outlays .....	0	40	85	140	145	160
Spending under H.R. 1522						
Budget authority/authorization level .....	44	154	154	154	154	154
Estimated outlays .....	44	66	97	142	145	160

<sup>1</sup> The 1998 level includes \$41 million appropriated from the HTF and \$3 million appropriated for the Advisory Council on Historic Preservation. The 1999 and 2000 levels are the amounts authorized under current law for appropriation to the council.

**Basis of estimate:** For purposes of this estimate, CBO assumes that the entire amounts deposited into the HTF or authorized for the advisory council under H.R. 1522 would be appropriated for each fiscal year. Outlay estimates are based on historical spending patterns for council activities and HTF programs. We adjusted the observed outlay rates for the purposes of projecting future HTF outlays because the higher appropriations assumed in this estimate—relative to historical appropriation levels—would likely cause some delays in finding matching shares for certain grants. The table does not include any potential spending from amounts deposited to the HTF in the past that have not yet been appropriated. Such funds—about \$2.3 billion—will remain available for appropriation under existing law even in the absence of legislation.

Other provisions of H.R. 1522, which would amend the National Historic Preservation Act, would have no impact on the federal budget.

**Pay-as-you-go considerations:** None.

**Intergovernmental and private-sector impact:** H.R. 1522 contains no intergovernmental or private-sector mandates as defined in UMRA and would have no impact on the budgets of state, local, or tribal governments.

**Estimate prepared by:** Deborah Reis.

**Estimate approved by:** Robert A. Sunshine, Deputy Assistant Director for Budget Analysis.

#### COMPLIANCE WITH PUBLIC LAW 104-4

H.R. 1522 contains no unfunded mandates.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (existing law proposed to be omitted is enclosed in black brackets, new matter is printed in italic, existing law in which no change is proposed is shown in roman):

#### NATIONAL HISTORIC PRESERVATION ACT

\* \* \* \* \*

## TITLE I

SEC. 101. (a)(1)(A) The Secretary of the Interior is authorized to expand and maintain a National Register of Historic Places composed of districts, sites, buildings, structures, and objects significant in American history, architecture, archeology, engineering, and culture.

\* \* \* \* \*

(6) The Secretary shall promulgate regulations requiring that before any property or district may be included on the National Register or designated as a National Historic Landmark, the owner or owners of such property, or a majority of the owners of the properties within the district in the case of an historic district, shall be given the opportunity (including a reasonable period of time) to concur in, or object to, the nomination of the property or district for such inclusion or designation. If the owner or owners of any privately owned property, or a majority of the owners of such properties within the district in the case of an historic district, object to such inclusion or designation, such property shall not be included on the National Register or designated as a National Historic Landmark until such objection is withdrawn. The Secretary **[shall review]** *may review* the nomination of the property or district where any such objection has been made and **[shall determine]** *determine* whether or not the property or district is eligible for such inclusion or designation, and if the Secretary determines that such property or district is eligible for such inclusion or designation, he shall inform the Advisory Council on Historic Preservation, the appropriate State Historic Preservation Officer, the appropriate chief elected local official and the owner or owners of such property, of his determination. The regulations under this paragraph shall include provisions to carry out the purposes of this paragraph in the case of multiple ownership of a single property.

\* \* \* \* \*

(b)(1) The Secretary, in consultation with the National Conference of State Historic Preservation Officers and the National Trust for Historic Preservation, shall promulgate or revise regulations for State Historic Preservation Programs. Such regulations shall provide that a State program submitted to the Secretary under this section shall be approved by the Secretary if he determines that the program—

(A) \* \* \*

\* \* \* \* \*

*For purposes of subparagraph (A), the State and Indian tribe shall be solely responsible for determining which professional employees, are necessary to carry out the duties of the State or tribe, consistent with standards developed by the Secretary.*

\* \* \* \* \*

(e)(1) The Secretary shall administer a program of matching grants to the States for the purposes of carrying out this Act.

**[(2)]** The Secretary shall administer a program of matching grant-in-aid to the National Trust for Historic Preservation in the United States, chartered by Act of Congress approved October 26,



1949 (63 Stat. 927), for the purposes of carrying out the responsibilities of the National Trust.】

*(2) The Secretary may administer grants to the National Trust for Historic Preservation in the United States, chartered by an Act of Congress approved October 26, 1949 (63 Stat. 947), consistent with the purposes of its charter and this Act.*

\* \* \* \* \*

SEC. 102. (a) No grant may be made under this Act—

(1) \* \* \*

\* \* \* \* \*

(d) No State shall be permitted to utilize the value of real property obtained before the date of approval of this Act in meeting the remaining cost of a project for which a grant is made under this Act.

【(d)】 (e) The Secretary shall make funding available to individual States and the National Trust for Historic Preservation as soon as practicable after execution of a grant agreement. For purposes of administration, grants to individual States and the National Trust each shall be considered to be one grant and shall be administered by the National Park Service as such.

【(e)】 (f) The total administrative costs, direct and indirect, charged for carrying out State projects and programs may not exceed 25 percent of the aggregate costs except in the case of grants under section 101(e)(6).

\* \* \* \* \*

【SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds.】

*SEC. 107. Nothing in this Act shall be construed to be applicable to the White House and its grounds, the Supreme Court building and its grounds, or the United States Capitol and its related buildings and grounds as depicted on the map entitled “Map Showing Properties Under the Jurisdiction of the Architect of the Capitol” and dated November 6, 1996, which shall be on file in the office of the Secretary of the Interior.*

SEC. 108. To carry out the provisions of this Act, there is hereby established the Historic Preservation Fund (hereafter referred to as the “fund”) in the Treasury of the United States.

There shall be covered into such fund \$24,400,000 for fiscal year 1977, \$100,000,000 for fiscal year 1978, \$100,000,000 for fiscal year 1979, \$150,000,000 for fiscal year 1980, and \$150,000,000 for fiscal year 1981 and \$150,000,000 for each of fiscal years 1982 through 【1997】 2004, from revenues due and payable to the United States under the Outer Continental Shelf Lands Act (67 Stat. 462, 469), as amended (43 U.S.C. 338), and/or under the Act of June 4, 1920 (41 Stat. 813), as amended (30 U.S.C. 191), notwithstanding any provision of law that such proceeds shall be credited to miscellaneous receipts of the Treasury. Such moneys shall be used only to carry out the purposes of this Act and shall be available for expenditure only when appropriated by the Congress. Any moneys not appropriated shall remain available in the fund until appro-

priated for said purposes: *Provided*, That appropriations made pursuant to this paragraph may be made without fiscal year limitation.

\* \* \* \* \*

SEC. 110. (a)(1) The heads of all Federal agencies shall assume responsibility for the preservation of historic properties which are owned or controlled by such agency. Prior to acquiring, constructing, or leasing buildings for purposes of carrying out agency responsibilities, each Federal agency shall use, to the maximum extent feasible, historic properties available to the agency, *especially those located in central business areas. When locating Federal facilities, Federal agencies shall give first consideration to historic properties in historic districts. If no such property is suitable, then Federal agencies shall consider other developed or undeveloped sites within historic districts. Federal agencies shall then consider historic properties outside of historic districts, if no suitable site within a district exists. Any rehabilitation or construction that is undertaken pursuant to this Act must be architecturally compatible with the character of the surrounding historic district or properties.* Each agency shall undertake, consistent with the preservation of such properties and the mission of the agency and the professional standards established pursuant to section 101(g), any preservation, as may be necessary to carry out this section.

\* \* \* \* \*

(1) With respect to any undertaking subject to section 106 which adversely affects any property included in or eligible for inclusion in the National Register, and for which a Federal agency has not entered into an agreement **[with the Council]** *pursuant to regulations issued by the Council*, the head of such agency shall document any decision made pursuant to section 106. The head of such agency may not delegate his or her responsibilities pursuant to such section. Where a section 106 memorandum of agreement has been executed with respect to an undertaking, such memorandum shall govern the undertaking and all of its parts.

\* \* \* \* \*

## TITLE II

\* \* \* \* \*

SEC. 205. (a) \* \* \*

\* \* \* \* \*

(h) *Any permanent employee of the Council as of December 31, 1997, may be appointed to a position in another agency of the Executive branch without regard to the provisions of title 5, United States Code, governing appointments in the competitive service, if the agency or the Office of Personnel Management, as appropriate, determines that the employee is qualified for the position.*

\* \* \* \* \*

SEC. 212. (a) The Council shall submit its budget annually as a related agency of the Department of the Interior. There are author-

ized to be appropriated for the purposes of this title not to exceed  
\$4,000,000 in each fiscal year 1997 through **[2000]** *2004*.

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